

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America)	
)	Cr. No. 6:02-1358-HMH
)	
vs.)	OPINION AND ORDER
)	
Octavius S. Cline,)	
)	
Movant.)	

This matter is before the court on Octavius S. Cline’s (“Cline”) motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. For the reasons explained below, the court dismisses Cline’s motion.

On September 22, 2004, a jury found Cline guilty of one count of conspiracy to possess with intent to distribute or to distribute 50 grams or more of crack cocaine. The court sentenced Cline to 360 months’ imprisonment on January 4, 2005. Cline appealed his conviction and sentence, and on March 1, 2006, the United States Court of Appeals for the Fourth Circuit affirmed Cline’s conviction. United States v. Cline, No. 05-4075, 2006 WL 487089, at *1 (4th Cir. Mar. 1, 2006) (unpublished). On August 22, 2007, Cline filed a § 2255 motion, which the court summarily dismissed on August 30, 2007. Cline appealed the dismissal of his habeas claim, and the Fourth Circuit dismissed Cline’s appeal on May 29, 2008. United States v. Cline, No. 08-6044, 2008 WL 2225568, at *1 (4th Cir. May 29, 2008) (unpublished). Cline sought permission from the Fourth Circuit to file a second habeas petition, but the Fourth Circuit denied Cline’s motion on March 24, 2009. United States v. Cline, No. 09-128, at *1 (4th Cir. Mar. 24, 2009) (unpublished). On October 19, 2009, Cline filed a second § 2255 motion, which the court

dismissed on November 2, 2009. Cline appealed the court's November Order, and the Fourth Circuit dismissed Cline's appeal on April 5, 2010. United States v. Cline, No. 09-8069, 2010 WL 1274310, at *1 (4th Cir. Apr. 5, 2010) (unpublished). Cline filed the instant § 2255 motion on December 8, 2010.

"Before a second or successive [habeas] application . . . is filed in the district court, the appellant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). Because Cline has failed to seek authorization from the Fourth Circuit to file a successive § 2255 motion, the court must dismiss the instant motion for lack of subject matter jurisdiction. See United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003).

It is therefore

ORDERED that Cline's § 2255 motion, docket number 686, is dismissed. It is further

ORDERED that a certificate of appealability is denied because Cline has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
December 14, 2010

NOTICE OF RIGHT TO APPEAL

The Movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.